

(25,374)

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1916.**

**No. 544.**

**NORTHERN PACIFIC RAILWAY COMPANY, PLAINTIFF  
IN ERROR,**

**vs.**

**MONARCH ELEVATOR COMPANY.**

**IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.**

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1 STATE OF MINNESOTA,  
County of Ramsey:

District Court, Second Judicial District.

MONARCH ELEVATOR COMPANY, a Corporation, Plaintiff,  
vs.  
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

*Summons.*

The State of Minnesota to the above named Defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, which is hereto attached and herewith served upon you, and to serve a copy of your answer to said complaint upon the subscribers at their office at  
2 Rooms 101-4 Pioneer Building in the City of St. Paul, County of Ramsey and State of Minnesota, within twenty (20) days from and after the date of the service of this summons upon you, exclusive of the day of such service; and if you shall fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief prayed for and demanded in said complaint, together with plaintiff's costs and disbursements herein.

Dated at St. Paul, Minnesota, this 23rd day of April, A. D. 1914.

WATSON & ABERNETHY,  
*Attorneys for Plaintiff.*

1601-4 Pioneer Building, St. Paul, Minnesota.

STATE OF MINNESOTA,  
County of Ramsey:

District Court, Second Judicial District.

MONARCH ELEVATOR COMPANY, a Corporation, Plaintiff,  
vs.  
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

*Complaint.*

The plaintiff for its complaint against the defendant in the above entitled action, avers and alleges as follows:

I.

1. That at the times hereinafter mentioned, the plaintiff was and still is a duly organized corporation, with principal office at Min-

3 neapolis, Minnesota; that it is engaged in the general grain and coal business, and owns and operates grain elevators and coal yards at various cities and towns in the state of Minnesota.

2. That at the times hereinafter mentioned the defendant was and still is a corporation, duly organized and existing under the laws of the States of Minnesota and Wisconsin, and was and still is a common carrier of goods for hire between places in the state of Minnesota, and more particularly between the places hereinafter mentioned.

3. That the defendant at various judicial sales prior to September 1, 1896, acquired the railway of the Northern Pacific Railroad Company, a corporation incorporated under the act of Congress July 2, 1864, and that said Northern Pacific Railroad Company built its railroad through the state of Minnesota under and pursuant to Chapter 69, Laws of Minnesota for 1865, which law inter alia expressly provided:

"Provided, that should the said company elect to make the eastern terminus of said road east of the eastern boundary of the state of Minnesota, then, and in that case, they shall construct or cause to be constructed, a line of railroad from the main line to the navigable waters of Lake Superior within the state of Minnesota, of the same gauge as said main line, for which purpose the same powers, rights and privileges are hereby granted to said company as they have or may have to construct said main line within the state of Minnesota."

That the Northern Pacific Railroad Company under the authority and pursuant to aforesaid act, which was approved March 2, 1865, did construct or acquire a railroad from Carlton to Duluth in the state of Minnesota, and acquired large terminal facilities at Duluth, thereby providing a line of railroad entirely within the state of Minnesota between Duluth and points in Minnesota; that the defendant on the twelfth day of September, 1900, entered into an agreement with the State of Minnesota, as per Exhibit No. 1 which is hereto attached and made part of plaintiff's complaint herein; that pursuant to the aforesaid act of 1865 and the aforesaid agreement of September 12, 1900, the defendant was obliged and bounden to operate its line of railroad from Duluth to points in Minnesota wholly within the state of Minnesota for the transportation of coal and other freight from Duluth to points in Minnesota; that defendant has failed and neglected to so operate its line, and has failed to transport the shipments of coal hereinafter set forth, via its said line wholly within the state of Minnesota, to the detriment and damage of plaintiff as hereinafter more fully set forth.

4. That at the times hereinafter mentioned said defendant owned, operated and used two lines of railroad between Duluth, Minnesota, and Battle Lake, Minnesota, for the transportation of hard coal and soft coal, in carloads, viz., (1) one line (hereinafter called the "State Line"), approximately 191.3 miles in length, extending in a southeasterly direction from Duluth, Minnesota, to Carlton, Min-

nesota, thence in a southwesterly direction to Battle Lake, Minnesota, all of said line being wholly within the state of Minnesota; (2) another line (hereinafter called the "Interstate Line"), approximately 197.9 miles in length, extending in a southeasterly direction from Duluth, Minnesota, to West Duluth Junction, Minnesota, thence to Superior, Wisconsin, thence through Wrenshall, Minnesota, to Carlton, Minnesota, thence in a southwesterly direction to Battle Lake, Minnesota.

5. That under Chapter 232 Laws of Minnesota for 1907, the maximum rate per net ton which defendant could lawfully exact, demand, charge and receive for the transportation of soft coal, in carloads, from Duluth, Minnesota, to Battle Lake, Minnesota, via the said "State Line" during the period from June 1, 1907, to January 1, 1914, was \$1.12; and for the transportation of hard coal, in carloads, from Duluth, Minnesota, to Battle Lake, Minnesota, via the said "State Line" during said period, was \$1.42; that under defendant's published tariffs on file with the Interstate Commerce Commission, defendant's rate from Duluth, Minnesota, to Battle Lake, Minnesota, via the said "Interstate Line" was \$1.90 per net ton on soft coal, and \$2.00 per net ton on hard coal.

6. That on or about the dates set forth in Exhibit A, which is hereto attached and made part of plaintiff's complaint herein, the plaintiff delivered to the defendant at Duluth, Minnesota, the shipments of hard coal and soft coal set forth in said Exhibit A, the same being loaded in the cars set forth in said Exhibit A, to be transported to Battle Lake, Minnesota; that the several shipments weighed the pounds set forth in said Exhibit A; that the defendant accepted the said shipments to be transported as aforesaid, and thereupon it became defendant's duty to transport the same via its line of railroad over which the lowest freight rate obtained.

7. That the defendant transported said shipments as alleged in paragraph 6, via the said "Interstate Line," and for its services exacted, demanded and received from plaintiff the rate of \$1.90 per net ton on the soft coal, aggregating the sum of \$727.06, and the rate of \$2.00 per net ton on the hard coal, aggregating the sum of \$298.80; instead of transporting the said shipments via the "State Line," which it was defendant's duty to do, and which would have entitled the defendant to have demanded and have received from the plaintiff the rate of \$1.12 per net ton on the soft coal, aggregating the sum of \$428.56, and the rate of \$1.42 per net ton on the hard coal, aggregating the sum of \$212.01; that by reason thereof, the plaintiff was injured and damaged in the sum of \$298.50 on the shipments of soft coal, and \$86.69 on the shipments of hard coal, together with interest on the said respective amounts from the dates of the payments thereof at six per cent per annum, as set forth in said Exhibit A.

Wherefore, the plaintiff demands judgment against the defendant in the principal sum of Three Hundred Eight-five and 9/100 Dollars (\$385.09), with interest on:



7-59     \$20.80 from November 29, 1907;  
           \$19.58 from December 27, 1907;  
           \$31.79 from January 7, 1910;  
           \$23.21 from January 13, 1910;  
           \$27.92 from August 24, 1910;  
           \$17.63 from October 13, 1910;  
           \$33.85 from January 17, 1911;  
           \$26.13 from November 16, 1911;  
           \$17.20 from November 23, 1911;  
           \$32.06 from February 12, 1912;  
           \$18.80 from August 24, 1912;  
           \$29.53 from September 4, 1912;  
           \$16.88 from November 27, 1908;  
           \$19.02 from January 30, 1909;  
           \$12.93 from January 10, 1911;  
           \$20.71 from December 22, 1911;  
           \$17.05 from January 16, 1912;  
 and for its costs and disbursements herein.

\* \* \* \* \*

60     STATE OF MINNESOTA,  
           County of Ramsey:

District Court, Second Judicial District.

MONARCH ELEVATOR COMPANY, a Corporation, Plaintiff,

VS.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

*Answer.*

The defendant for answer to the complaint avers:

# I.

It admits all of the allegations of the complaint, except:

(a) It denies that under the agreement of September 12, 1900, referred to in the complaint, this defendant was obliged or bounden to transport the coal referred to in complaint from Duluth to Minnesota points over the intrastate line of railroad of this defendant, and avers that it has in all respects operated its line of railroad and the whole thereof in full compliance with the requirements of Chapter 69 of the Laws of Minnesota for the year 1865, and of the agreement of September 12, 1900.

(b) It denies that on receipt of the coal referred to in the complaint it became the duty of this defendant to transport the same in any other manner than as the same was transported as hereinafter set forth.

(c) It denies that as a consequence of any of the matters or things set forth in the complaint the plaintiff suffered damage in any sum whatsoever.

## II.

Further answering and for a separate defense to the complaint, this defendant alleges that between Duluth, Minnesota, and Carlton, Minnesota, it owned during all the time mentioned in the complaint and still owns two lines of railway, one lying wholly within the State of Minnesota and the other extending from Duluth, Minnesota, through Wisconsin, to Carlton, Minnesota. The distance between said points via the intrastate line was 20.9 miles, and via the interstate line was 27.5 miles. All of the shipments of coal referred to in the complaint in the course of their carriage to the respective destinations named in the complaint passed through said station of Carlton, Minnesota, and must have passed through said station whether carried over the interstate line or the intrastate line of the defendant. The grades of said two lines, however, were such that in the ordinary and proper and economical operation of its property, it was necessary to move, and this defendant in general did and does now, move all out bound shipments from Duluth via the interstate line and all inbound shipments into Duluth via the intrastate line, and that to have carried the shipments referred to in the complaint to their respective destinations via said intrastate line instead of via the interstate line, over which they were actually carried, would have entailed great additional expense upon this defendant.

## III.

Defendant further alleges that before the carriage by this defendant of any of the shipments referred to in the complaint a suit in equity was commenced in the Circuit Court of the United States, District of Minnesota, Third Division, wherein Charles E. Perkins and David C. Shepard were plaintiffs and this defendant, Northern Pacific Railway Company, and certain individuals were defendants, in which suit the complaints asked that this defendant be enjoined from publishing or making effective the rates prescribed by said Chapter 232 of the laws of Minnesota for the year 1907, and that during the whole of the period referred to in said complaint this defendant was, by the order of said Circuit Court of the United States for the District of Minnesota, enjoined and restrained from publishing or making effective the rates prescribed in said Chapter 232 and that said order so enjoining and restraining this defendant was not dissolved until July, 1913, when it was dissolved pursuant to the mandate of the Supreme Court of the United States reversing said order of said Circuit Court of the United States for the District of Minnesota. Defendant alleges that during all of the time mentioned in the complaint, the rates actually published and collected by defendant for the carriage of coal from Duluth, Minnesota, to the respective destinations referred to in the complaint were the same via the intrastate line as via the interstate line of this defendant.

## IV.

Defendant further alleges that the rates accurately charged by it and collected from plaintiff for the carriage of shipments referred to in the complaint via its interstate line were just and reasonable rates for the service so performed by defendant; that all of said rates were duly collected pursuant to tariffs duly published and filed with the Interstate Commerce Commission, and were the legal rates for the service so rendered.

Wherefore, having fully answered, defendant prays judgment for its costs.

C. W. BUNN AND  
CHARLES DONNELLY,  
*Attorneys for Defendant.*

Due service of this instrument and receipt of copy thereof admitted at St. Paul this 13th day of May 1915.

WATSON & ABERNETHY,  
*Attorney for Plaintiff.*

(Endorsed:) Filed Sep. 30, 1915. N. C. Robinson, by G. A. Johnson, Deputy.

STATE OF MINNESOTA,  
*County of Ramsey:*

District Court, Second Judicial District.

MONARCH ELEVATOR COMPANY, Plaintiff,

VS.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

*Demurrer to Answer..*

## I.

The plaintiff demurs to Subdivision I. of the Answer herein on the ground that it does not state facts sufficient to constitute a defense.

## II.

The plaintiff demurs to Subdivision II. of the Answer herein on the ground that it does not state facts sufficient to constitute a defense.

## III.

The plaintiff demurs to Subdivision III. of the Answer herein on the ground that it does not state facts sufficient to constitute a defense.



## IV.

The plaintiff demurs to Subdivision IV. of the Answer herein on the ground that it does not state facts sufficient to constitute a defense.

WATSON & ABERNETHY,  
*Attorneys for Plaintiff.*

1601-4 Pioneer Building, St. Paul, Minnesota.

Due and personal service of within Demurrer admitted this 2nd day of June, 1915.

C. W. BUNN AND  
CHARLES DONNELLY,  
*Attorneys for Defendant.*

(Endorsed:) Filed Jun. 3, 1915. Matt Jensen, Clerk, by G. A. Johnson, Deputy.

STATE OF MINNESOTA,  
*County of Ramsey:*

District Court, Second Judicial District.

MONARCH ELEVATOR COMPANY

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation.

The above entitled matter came duly on to be heard by the court June 12, 1915, Messrs. Watson & Abernethy appearing as counsel for plaintiff, and Messrs. C. W. Bunn and Charles Donnelly appearing as counsel for defendant. Said matter came on to be heard upon the demurrer of plaintiff as set forth in the files herein. Upon the files herein and the arguments and briefs submitted by counsel and being advised in the premises, it is

Ordered that the plaintiff's demurrer to Subdivisions I., II., III. and IV. of the answer be sustained and that the plaintiff have judgment thereon; but with leave to the defendant to amend the answer within twenty (20) days from the date of service.

Dated September 30, 1915.

HUGO O. HANFT,  
*District Judge.*

Stay of 20 days from filing hereof.

HANFT, J.

(Endorsed:) Filed Oct. 2, 1915. N. C. Robinson, by G. P. Ritt, Deputy.

65 STATE OF MINNESOTA,  
County of Ramsey:

District Court, Second Judicial District.

MONARCH ELEVATOR COMPANY, Plaintiff,  
VS.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

*Notice of Filing of Order.*

To Messrs. C. W. Bunn and Charles Donnelly, Attorneys for Defendant:

Please take notice that the above entitled Court has made its order sustaining the plaintiff's demurrer to subdivisions 1, 2, 3, and 4 of the defendant's answer, and that the plaintiff have judgment thereon, but with leave to the defendant to amend the answer within twenty (20) days from the date of service; and that said order was filed in the office of the Clerk of the above entitled Court on October 2, 1915.

Dated at St. Paul, Minnesota, October 6, 1915.

WATSON & ABERNETHY,  
Attorneys for Plaintiff.

Due and personal service of within Notice admitted this 6th day of October, 1915.

CHARLES DONNELLY,  
Attorneys for Defendant.

(Endorsed:) Filed Nov. 1, 1915. N. C. Robinson, by G. A. Johnson, Deputy.

66 STATE OF MINNESOTA,  
County of Ramsey:

District Court, Second Judicial District.

MONARCH ELEVATOR COMPANY, Plaintiff,  
VS.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

*Affidavit of No Answer.*

STATE OF MINNESOTA,  
County of Ramsey, ss:

Ernest E. Watson being first duly sworn on oath states that he is one of the attorneys for the plaintiff in the above entitled action; that on the 30th day of September, 1915, an order was made and filed herein, sustaining plaintiff's demurrer to subdivisions I, II, III and IV of the answer of the defendant and ordering judgment

for the plaintiff thereon; but with leave to the defendant to amend its answer within 20 days from the date of the service of said order; that said order was served on the defendant on the 6th day of October, and that more than 20 days have elapsed since said service and no amended answer has been received herein or any appearance made by defendant, all of which more fully appear from the files herein.

ERNEST E. WATSON.

Subscribed and sworn to before me this 29th day of October, 1915.

[NOTARIAL SEAL.]

JOHN J. AUTON,  
*Notary Public, Ramsey County, Minn.*

My commission expires June 20, 1918.

(Endorsed:) Filed Nov. 1, 1915. N. C. Robinson, by G. A. Johnson, Deputy.

67 STATE OF MINNESOTA,  
*County of Ramsey:*

District Court, Second Judicial District.

MONARCH ELEVATOR COMPANY, Plaintiff,  
against  
NORTHERN PACIFIC RAILWAY COMPANY, Defendant.

*Judgment.*

Pursuant to the Order of the Court duly made and filed in the above entitled action on the 2nd day of October, A. D. 1915.

Now, on motion of Messrs. Watson & Abernethy, said Attorneys, it is hereby adjudged that the plaintiff herein recover of said Defendant Northern Pacific Railway Company the sum of Three thousand three hundred twenty-one and 19/100 Dollars damages, costs and disbursements, in all amounting to \$3,321.19.

Signed this 1st day of November, A. D. 1915.

N. C. ROBINSON, *Clerk*,  
By G. A. JOHNSON,  
*Deputy Clerk.*

(Endorsed:) Judgment Roll. Filed 1st day of Nov. A. D. 1915.  
N. C. Robinson, Clerk, by G. A. Johnson, Deputy Clerk.

68 STATE OF MINNESOTA,  
County of Ramsey:

District Court, Second Judicial District.

MONARCH ELEVATOR COMPANY, Plaintiff,  
vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

*Notice of Appeal.*

To the above named Plaintiff, and to Messrs. Watson & Abernethy, its attorneys, and to N. C. Robinson, Clerk of said Court:

You and each of you will please take notice that the defendant, Northern Pacific Railway Company, appeals to the Supreme Court of the State of Minnesota from the judgment in favor of the plaintiff and against the Northern Pacific Railway Company in the sum of three thousand three hundred and twenty-one dollars and nineteen cents (\$3,321.19) rendered and entered on the 1st day of November, 1915, and from the whole thereof.

CHARLES W. BUNN AND  
CHARLES DONNELLY,  
*Attorneys for Northern Pacific Railway Company.*

Due and personal service of the foregoing notice and receipt of a copy thereof are hereby admitted this 9th day of November, 1915, and a bond for costs and the supersedeas bond required by Sections 8002 and 8004 of the General Statutes of Minnesota 1913 are hereby waived.

WATSON & ABERNETHY,  
*Attorneys for Plaintiff.*

Due and personal service and receipt of a copy of the foregoing notice are hereby admitted this 16th day of November, 1915.

N. C. ROBINSON,  
*Clerk of said District Court.*

(Endorsed:) Filed Nov. 17, 1915. N. C. Robinson, by G. P. Ritt, Deputy.

69 Second Judicial District.

STATE OF MINNESOTA,  
County of Ramsey:

I, N. C. Robinson, Clerk of the District Court, Ramsey County, and State of Minnesota, do hereby certify and return to the Honorable the Supreme Court of said State, that I have compared the foregoing paper with the original Notice of Appeal in the action therein entitled, now remaining of record in my office, and



that the same is a true and correct copy and transcript of said original and the whole thereof.

Witness my hand and seal of said Court, at St. Paul, this 17th day of November A. D. 1915.

[SEAL.]

N. C. ROBINSON, *Clerk.*  
By G. P. RITT,  
*Deputy Clerk.*

(Endorsed:) Filed Nov. 24, 1915. I. A. Caswell, Clerk.

70 STATE OF MINNESOTA:

Supreme Court, October Term, 1915.

MONARCH ELEVATOR COMPANY, a Corporation, Respondent,  
vs.  
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Appellant.

*Assignment of Errors.*

1. The Court erred in sustaining the demurrer to the answer.
2. The Court erred in rendering judgment for the plaintiff.

CHARLES W. BUNN.  
CHARLES DONNELLY.

Service admitted March 1st, 1916.

WATSON & ABERNETHY,  
*Attorneys for Respondent Monarch Elevator Company.*

71 MONARCH ELEVATOR COMPANY, Respondent,  
vs.  
NORTHERN PACIFIC RAILWAY Co., Appellant.

*Per Curiam:*

The questions presented in this case are the same in all respects as those considered in the case of Solum against the same defendant decided herewith, and for the reasons stated in that decision the judgment herein is affirmed.

(Endorsed:) Filed May 19, 1916. I. A. Caswell, Clerk.

## 72 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1916.

No. 88.

MONARCH ELEVATOR COMPANY, Respondent,

*vs.*

NORTHERN PACIFIC RAILWAY COMPANY, Appellant.

Pursuant to an order of Court duly made and entered in this cause May 19, A. D. 1916.

It is here and hereby determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court of the Second Judicial District, sitting within and for the County of Ramsey be and the same hereby is in all things affirmed.

And it is further determined and adjudged that the Respondent above named, do have and recover of said Northern Pacific Railway Company, Appellant herein the sum and amount of Fifty-six and 00/100 Dollars, (\$56.00) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed May 23, A. D. 1916.

By the Court.

Attest:

I. A. CASWELL, *Clerk.*

*Statement for Judgment.*

Statutory Costs, \$25.00; Printer, \$31.00; Clerk, \$—; Acknowledgments, \$—; Return, \$—; Postage and Express, \$—; Filing Mandate, \$—. Total, \$56.00.

73 STATE OF MINNESOTA,  
*Supreme Court, ss:*

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul, May 23, A. D. 1916.

[SEAL.]

I. A. CASWELL, *Clerk.*

State of Minnesota, Supreme Court. Transcript of Judgment. Filed May 23, A. D. 1916. I. A. Caswell, Clerk.

(Endorsed:) Filed May 23, 1916. I. A. Caswell, Clerk. Judgment Roll.

73½ STATE OF MINNESOTA,  
Supreme Court, ss:

I, I. A. Caswell, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of Monarch Elevator Company, Respondent, vs. Northern Pacific Railway Company, Appellant, and also of the opinion of the court rendered therein together with the assignment of errors, as the same now appear on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this 14th day of June, 1916.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,  
Clerk Supreme Court of Minnesota.

74 In the Supreme Court of the State of Minnesota.

MONARCH ELEVATOR COMPANY, a Corporation, Respondent,  
v.  
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Appellant.

*Assignments of Error.*

Now comes the Northern Pacific Railway Company, the appellant above named, and says that the Supreme Court of the State of Minnesota erred in its decision and judgment in said cause as appears from the record therein, and that the errors committed are as follows:

1. The court erred in holding that the cause of action herein is not affected by the federal statute regulating interstate commerce.

2. The court erred in holding that the state courts of Minnesota had jurisdiction of said cause in advance of a determination by the Interstate Commerce Commission as to whether the practice of the Northern Pacific Railway Company in moving via its interstate route all shipments of the character involved in said cause was reasonable.

Wherefore, The Northern Pacific Railway Company prays that for the errors aforesaid the said judgment be reversed.

Dated this 22nd day of May, 1916.

C. W. BUNN,  
CHARLES DONNELLY,  
Attorneys for Northern Pacific Railway Company.

74½ [Endorsed:] 19685. In the Supreme Court of the State of Minnesota. Monarch Elevator Company, Respondent, v. Northern Pacific Railway Company, Appellant. Assignments of Error. Filed May 23, 1916. I. A. Caswell, Clerk.

75 In the Supreme Court of the State of Minnesota.

MONARCH ELEVATOR COMPANY, a Corporation, Respondent,  
v.  
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Appellant.

*Petition for Writ of Error.*

The Northern Pacific Railway Company, appellant in the above entitled cause, feeling itself aggrieved by the judgment entered herein on the 23d day of May, 1916, comes now, by Charles W. Bunn and Charles Donnelly, its attorneys, and petitions the said court for an order allowing said appellant to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which the Northern Pacific Railway Company shall give and furnish upon said writ of error and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States, and your petitioner will ever pray.

Dated May 23, 1916.

C. W. BUNN AND  
CHARLES DONNELLY,  
*Attorneys for Northern Pacific Railway Company.*

It is ordered by this court that a writ of error be allowed as prayed for in the foregoing petition, provided however, that the said Northern Pacific Railway Company, plaintiff in error, give bond  
76 according to law in the sum of Four Thousand Dollars (\$4000.00), which said bond shall operate as a supersedeas bond.

Dated this 23 day of May, 1916.

CALVIN L. BROWN,  
*Chief Justice of the Supreme Court  
of the State of Minnesota.*

76½ [Endorsed:] 19685. In the Supreme Court of the State of Minnesota. Monarch Elevator Company, Respondent, v. Northern Pacific Railway Company, Appellant. Petition for Writ of Error. Filed May 23, 1916. L. A. Caswell, Clerk.

77 In the Supreme Court of the State of Minnesota.

MONARCH ELEVATOR COMPANY, a Corporation, Respondent,  
v.  
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Appellant.

*Bond.*

Know all men by these presents, That we, Northern Pacific Railway Company, a corporation, as principal, and the National Surety



Company, a corporation, as surety, are held and firmly bound unto the above named respondent, Monarch Elevator Company, in the sum of Four Thousand Dollars (\$4000.00), to be paid to it and for the payment of which we bind ourselves and our successors and assigns firmly by these presents.

Sealed without seals and dated the 22nd day of May, A. D. 1916.

The condition of this obligation is such that, whereas, the said Northern Pacific Railway Company, Plaintiff in Error, seeks to prosecute its writ of error in the Supreme Court of the United States and to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Minnesota,

Now, Therefore, if the above named plaintiff in error shall prosecute its writ of error to effect and answer all costs and damages which may be adjudged, if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

NORTHERN PACIFIC RAILWAY  
COMPANY,

By C. W. BUNN AND  
CHARLES DONNELLY,

*Its Attorneys.*

NATIONAL SURETY COMPANY,

By W. C. McCURDY,

[SEAL.]

*Attorney in Fact.*

Approved:

CALVIN L. BROWN,

*Chief Justice, Supreme Court of Minnesota.*

(Endorsed:) Filed May 23, 1916. I. A. Caswell, Clerk.

78 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Minnesota, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Minnesota, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between Northern Pacific Railway Company, plaintiff in error, and Monarch Elevator Company, defendant in error, wherein was drawn in question the construction of a statute of the United States and the validity of contracts executed under and pursuant to said statute, and the decision was against the title, right, privilege or exemption specially set up or claimed under such statute; a manifest error hath happened to the great damage of the said Northern Pacific Railway Company as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the

Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the 23rd day of May, in the year of our Lord one thousand nine hundred and sixteen.

[Seal U. S. District Court, Dist. of Minnesota, Third Division.]

CHARLES L. SPENCER,

*Clerk of the United States District Court for  
the District of Minnesota.*

By MARGARET L. MULLANE,  
*Deputy Clerk.*

78½ [Endorsed:] 19685. Filed May 23, 1916. I. A. Caswell,  
Clerk.

79 STATE OF MINNESOTA,  
*Supreme Court, ss:*

I, I. A. Caswell, clerk of the said court, do hereby certify that there was lodged with me as such clerk on May 23, 1916, in the matter of Monarch Elevator Company, Respondent vs. Northern Pacific Railway Company, Appellant,

1. The original bond of which a copy is herein set forth;
2. Copies of the writ of error, as herein set forth,—one for each defendant and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this 14th day of June, 1916.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,

*Clerk Supreme Court of Minnesota.*

80 UNITED STATES OF AMERICA, ss:

To Monarch Elevator Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C. within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Minnesota, wherein Northern Pacific Railway Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Calvin L. Brown, Chief Justice of the

Supreme Court of the State of Minnesota, this 23rd day of May, in the year of our Lord, One Thousand Nine Hundred and Sixteen.

CALVIN L. BROWN,  
*Chief Justice of the Supreme Court  
of the State of Minnesota.*

Service of the foregoing citation admitted and receipt of a copy thereof acknowledged this 23rd day of May, 1916.

WATSON & ABERNETHY,  
*Attorneys for Monarch Elevator Company.*

80½ [Endorsed:] 19685. In the Supreme Court of the State of Minnesota. Monarch Elevator Company, Respondent, v. Northern Pacific Railway Company, Appellant. Citation. Filed May 23, 1916. I. A. Caswell, Clerk.

81 In the Supreme Court of the State of Minnesota.

MONARCH ELEVATOR COMPANY, a Corporation, Respondent,  
vs.  
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Appellant.

To the clerk of the above named court:

Will you please prepare transcript of record on writ of error carrying the above entitled cause to the Supreme Court of the United States for review, said transcript to consist of the following:

1. Complete return to your court as made by the Clerk of the District Court of Ramsey County, Minnesota, in which said cause originated.

2. Transcript of all proceedings in the Supreme Court of Minnesota, including the judgment entered therein and the opinion of the court therein.

3. The petition for writ of error, assignments of error, bond, original writ of error, original citation and the præcipe for transcript.

4. Your certificate.

CHARLES W. BUNN AND  
CHARLES DONNELLY,  
*Attorneys for Northern Pacific Railway Company.*

Due service of the foregoing præcipe and receipt of a copy thereof acknowledged this 24th day of May, 1916.

WATSON & ABERNETHY,  
*Attorneys for Respondent.*

81½ [Endorsed:] Original: 19685. Supreme Court State of Minn. Monarch Elev. Co. Respondent, vs. Nor. Pac. Ry. Co., Appellant. Filed May 24, 1916. I. A. Caswell, Clerk.

82 UNITED STATES OF AMERICA,  
*Supreme Court of Minnesota, ss:*

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Minnesota, at my office, in the city of St. Paul, Minnesota, this 14th day of June, 1916.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,  
*Clerk Supreme Court of Minnesota.*

83 Supreme Court of the United States.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Plaintiff  
 in Error,

v.

MONARCH ELEVATOR COMPANY, a Corporation.

*Statement under Section 9 of Rule of Points on Which Plaintiffs  
 in Error Will Rely and of the Parts of the Record Which it  
 Thinks Necessary for the Consideration Thereof.*

For a reversal of the judgment below the plaintiff in error intends to rely upon the following points:

1. That the state courts of Minnesota had no jurisdiction of said cause in advance of a determination by the Interstate Commerce Commission as to whether the practice of the plaintiff in error in moving via its interstate route all shipments of the character involved in said cause was reasonable.

2. That the statute of Minnesota prescribing rates for the carriage of coal in that state was invalid as involving a discrimination against and an interference with interstate commerce.

For the consideration of those questions, plaintiff in error thinks it necessary to print only the following parts of the record:

1. The summons, appearing on p. 1 of the return.

2. The first cause of action stated in the complaint, appearing on pp. 2 to 7 inclusive of the return.

84 3. The answer, appearing on pp. 60-63 of the return.

4. The demurrer, appearing on pp. 63-64 of the return.

5. The order sustaining demurrer to the answer, appearing on p. 64 of the return.

6. The notice of said order, appearing on p. 65 of the return.

7. The affidavit of service of said order, appearing on p. 66 of the return.

8. The judgment, appearing on p. 67 of the return.

9. The notice of appeal to the Supreme Court of Minnesota, appearing on p. 68 of the return.



10. The certificate of the Clerk of the District Court of Ramsey County, Minnesota, appearing on p. 69 of the return.

11. The assignment of errors in the Supreme Court of Minnesota, appearing on p. 70 of the return.

12. The per curiam order of the Supreme Court of Minnesota, appearing on p. 71 of the return.

13. The judgment of the Supreme Court of Minnesota, appearing on p. 72 of the return.

14. The Clerk's certificate of entry of judgment in the Supreme Court, appearing on p. 73 of the return.

15. Clerk's certificate of transcript, appearing on p. 73½ of the return.

16. Assignment of errors in the Supreme Court of Minnesota, appearing on p. 74 of the return.

17. Petition for writ of error and order allowing writ of error, appearing on p. 75-76 of the return.

18. Bond, appearing on p. 77 of the return.

19. Writ of error, appearing on p. 78 of the return.

20. Clerk's certificate that original bond and copy of writ of error were lodged with him, appearing on p. 79 of the return.

21. Citation, appearing on p. 80 of the return.

22. *Præcipe* for transcript, appearing on p. 81 of the return.

23. Clerk's certificate of transcript, appearing on p. 82 of the return.

CHARLES W. BUNN AND  
CHARLES DONNELLY,  
*Attorneys for Plaintiff in Error.*

Due service of the foregoing statement and receipt of a copy thereof is hereby acknowledged this 23rd day of June, 1916.

WATSON & ABERNETHY,  
*Attorneys for Monarch Elevator Company.*

86 [Endorsed:] Original. Supreme Court of the U. S. N. P. Ry. Co., vs. Monarch Elev. Co., Defendant. C. W. Bunn and Charles Donnelly Attorneys for Pl'tff, St. Paul, Minnesota.

87 [Endorsed:] File No. 25374. Supreme Court U. S. October term, 1916. Term No. 544. Northern Pacific Railway Company, Pl'ff in Error, vs. Monarch Elevator Company. Statement of points on which plaintiff in error intends to rely and designation of parts of record to be printed, and proof of service of same. Filed June 30, 1916.

Endorsed on cover: File No. 25,374. Minnesota Supreme Court. Term No. 544. Northern Pacific Railway Company, plaintiff in error, vs. Monarch Elevator Company. Filed June 30th, 1916. File No. 25,374.